CR.MA/10009/2004 1/6 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 10009 of 2004
with
CRIMINAL MISCELLANEOUS APPLICATION NO.7554 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHANJI VELJI SAVLA & 1 - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR NV ANJARIA for Petitioner No(s).: 1,2.
Mr.Gohil, Addl.PUBLIC PROSECUTOR for Respondent No(s).: 1.
MR HR PRAJAPATI for Respondent No(s).: 2.
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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 11/08/2005

ORAL JUDGMENT

1.The petitioner has preferred this petition for quashing of complaint and the order passed by the

Ld.Magistrate in Criminal Case No.523/03.

2. Heard Mr.Anjaria, Ld.advocate for the petitioner, Mr.Gohil, Ld.APP for respondent-State and Mr.Prajapati for the original complainant.

3. It has been submitted on behalf of the petitioner that the ingredients of section 417 of cheating are not satisfied even if the case is proved on the face of complaint. Mr.Anjaria submitted that at the time of settlement there was no inducement and after the settlement if somebody who could be said as cheated would be the son of the petitioner in whose favour the sale deed is executed. Therefore, he submitted that there is no offence made out for cheating as per section 417 IPC and the Ld.Magistrate ought not to have issued process.

4. Mr.Anjaria, Ld.advocate for the petitioner relied upon the decision of the Apex Court in the matter of **Mobarik Ali Ahmed vs The State of Bombay** reported in **AIR 1957 SC 857** and the decision of the Apex Court in the matter of **Abraham Kuruvila vs S.C.T.Institute of Medical Sciences and Technology and others** reported in **(2005) 9 SCC 50** for contending that if there is no inducement it would not be a case of cheating. He also submitted that the conduct on the part of the accused is that initially notice was

given and thereafter the complaint is filed and therefore he submitted that the complaint deserves to be quashed.

5. On behalf of the original complainant Mr.Prajapati submitted that at the time when the settlement was arrived at inducement was given to abide by the settlement and when the part of the property wasbeing constructed and he therefore submitted that thereafter the intention is apparent of the petitioner by transferring the property in contravention to the settlement. He, therefore, submitted that the ingredients of section 417 of IPC are satisfied and the order passed by the Ld.Magistrate does not deserve to be quashed and the same is legal and valid. He has relied upon the decision of the Apex Court in the matter of the Apex Court in the matter of **Trisuns Chemical Industry vs Rajesh Agarwal and others** reported in **1999(8) SCC 686** for contending that merely because there is a civil wrong it is not a valid ground for quashing the complaint. He also submitted that the ingredients of section 417 of IPC are satisfied.

6. Mr.Gohil, Ld.APP for the respondent-State has supported the order passed by the Ld.Magistrate.

7. Having considered the above, it, prima facie appears

that on factual aspects there is no dispute in as much as that the suit being Civil Suit No. 58/02was filed by the original complainant for declaration and perpetual injunction. There is also no dispute on the point that the settlement purshis was submitted before the Ld.Civil Judge in the proceedings of the aforesaid civil suit and on the basis of said settlement a consent decree came to be passed. It deserves to be recorded that as per the said settlement upon submitting settlement purshis the suit was withdrawn. Further, as per condition No.2 of the said settlement as and when the construction is completed the plaintiff had to pay the amount of Rs.1,05,000/-. Further, in view of the said settlement, further disputes raised in the suit were abandoned by the plaintiff-complainant and the will of the mother of the defendant in the suit who is petitioner herein and the accused in the proceedings was admitted and there were also inter se division of the share of the properties. There is also no dispute on the point that the plaintiff as well as the defendant in the suit are the brothers. There is also no dispute on the point that after the settlement is entered into sale deed is executed by the defendant of the suit who is one of the accused

in the complaint in favour of the son.

8. Therefore, it can not be said that when the settlement was entered into there was no inducement to the plaintiff to abandon various other disputes which were the subject matter of the suit. Further, as stated in the complaint, the title is transferred after entering into the settlement which prima facie makes out a case for cheating under section 417 of IPC. It is well settled that if a prima facie case is made out on the basis of accusation made in the complaint, in normal circumstances, this court would not exercise its power under section 482 of Cr.P.C for quashing the complaint unless a case is made out for abuse of process of law. In the present case, the abuse, if any, appears to have been made out by the accused petitioner herein and therefore the same would be a valid ground for non-exercise of discretionary power of this court under section 482 of Cr.P.C since exercise of power can be made to meet with the ends of justice. The party who has created a situation by frustrating the rights in the presence of the settlement entered into before the court, normally can not be allowed to invoke discretionary jurisdiction of this court under section 482 of Cr.P.C.

9. In view of the above, petition fails and is rejected. Rule is discharged with costs of Rs.3,000/-.

10. In view of the order in main Cr.M.A.No.10009/04, no order is required to be passed in Cri.Misc.Application No. 7554/05 since same would not survive. Cri.Misc.Application No.7554/05 shall stand disposed of accordingly.

(JAYANT PATEL,J)

11.8.05/murty